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HOUSE BILL 253

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Al Park

AN ACT

RELATING TO ELECTIONS; REQUIRING CERTAIN CAMPAIGN REPORTS TO BE FILED QUARTERLY; REQUIRING MONTHLY REPORTS DURING AN ELECTION YEAR; CHANGING REPORTING REQUIREMENTS; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 1997; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 1-19-26 NMSA 1978 (being Laws 1979, Chapter 360, Section 2, as amended) is amended to read:

"1-19-26. DEFINITIONS.--As used in the Campaign Reporting Act:

A. "advertising campaign" means an advertisement or series of advertisements used for a political purpose and disseminated to the public either in print, by radio or television broadcast or by any other electronic means,

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1 including telephonic communications, and may include direct or
2 bulk mailings of printed materials;

3 B. "anonymous contribution" means a contribution
4 the contributor of which is unknown to the candidate or [~~his~~]
5 the candidate's agent or the political committee or its agent
6 who accepts the contribution;

7 C. "bank account" means an account in a financial
8 institution located in New Mexico;

9 D. "campaign committee" means two or more persons
10 authorized by a candidate to raise, collect or expend
11 contributions on the candidate's behalf for the purpose of
12 electing [~~him~~] the candidate to office;

13 E. "candidate" means an individual who seeks or
14 considers an office in an election covered by the Campaign
15 Reporting Act, including a public official, who either has
16 filed a declaration of candidacy or nominating petition or:

17 (1) for a non-statewide office, has received
18 contributions or made expenditures of one thousand dollars
19 (\$1,000) or more or authorized another person or campaign
20 committee to receive contributions or make expenditures of one
21 thousand dollars (\$1,000) or more for the purpose of seeking
22 election to the office; or

23 (2) for a statewide office, has received
24 contributions or made expenditures of two thousand five hundred
25 dollars (\$2,500) or more or authorized another person or

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1 campaign committee to receive contributions or make
2 expenditures of two thousand five hundred dollars (\$2,500) or
3 more for the purpose of seeking election to the office or for
4 candidacy exploration purposes in the years prior to the year
5 of the election;

6 F. "contribution" means a gift, subscription, loan,
7 advance or deposit of money or other thing of value, including
8 the estimated value of an in-kind contribution, that is made or
9 received for a political purpose, including payment of a debt
10 incurred in an election campaign, but "contribution" does not
11 include the value of services provided without compensation or
12 unreimbursed travel or other personal expenses of individuals
13 who volunteer a portion or all of their time on behalf of a
14 candidate or political committee, nor does it include the
15 administrative or solicitation expenses of a political
16 committee that are paid by an organization that sponsors the
17 committee;

18 G. "deliver" or "delivery" means to deliver by
19 certified or registered mail, telecopier, electronic
20 transmission or facsimile or by personal service;

21 H. "election" means any primary, general or
22 statewide special election in New Mexico and includes county
23 and judicial retention elections but excludes municipal, school
24 board and special district elections;

25 I. "election year" means an even-numbered year in

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1 which an election covered by the Campaign Reporting Act is
2 held;

3 J. "expenditure" means a payment, transfer or
4 distribution or obligation or promise to pay, transfer or
5 distribute any money or other thing of value for a political
6 purpose, including payment of a debt incurred in an election
7 campaign or pre-primary convention, but does not include the
8 administrative or solicitation expenses of a political
9 committee that are paid by an organization that sponsors the
10 committee;

11 K. "person" means an individual or entity;

12 L. "political committee" means two or more persons,
13 other than members of a candidate's immediate family or
14 campaign committee or a husband and wife who make a
15 contribution out of a joint account, who are selected,
16 appointed, chosen, associated, organized or operated primarily
17 for a political purpose; and "political committee" includes:

18 (1) political action committees or similar
19 organizations composed of employees or members of any
20 corporation, labor organization, trade or professional
21 association or any other similar group that raises, collects,
22 expends or contributes money or any other thing of value for a
23 political purpose;

24 (2) a single individual [~~who by his~~] whose
25 actions [~~represents~~] represent that [~~he~~] the individual is a

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1 political committee; and

2 (3) a person or an organization of two or more
3 persons that within one calendar year expends funds in excess
4 of five hundred dollars (\$500) to conduct an advertising
5 campaign for a political purpose;

6 M. "political purpose" means influencing or
7 attempting to influence an election or pre-primary convention,
8 including a constitutional amendment or other question
9 submitted to the voters;

10 N. "prescribed form" means a form or electronic
11 format prepared and prescribed by the secretary of state;

12 O. "proper filing officer" means either the
13 secretary of state or the county clerk as provided in Section
14 1-19-27 NMSA 1978;

15 P. "public official" means a person elected to an
16 office in an election covered by the Campaign Reporting Act or
17 a person appointed to an office that is subject to an election
18 covered by that act; and

19 Q. "reporting individual" means every public
20 official, candidate or treasurer of a campaign committee and
21 every treasurer of a political committee [~~and~~

22 ~~R. "statement of exception" or "statement" means~~
23 ~~the prescribed form subscribed and sworn to by a candidate to~~
24 ~~indicate that the candidate does not intend to raise or expend~~
25 ~~the minimum amount required for the filing of a report of~~

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1 ~~expenditures and contributions as provided in Section 1-19-33~~
2 ~~NMSA 1978]."~~

3 Section 2. Section 1-19-27 NMSA 1978 (being Laws 1979,
4 Chapter 360, Section 3, as amended) is amended to read:

5 "1-19-27. REPORTS REQUIRED--PROPER FILING OFFICER.--

6 A. Except for those candidates and public officials
7 who file a statement of [~~exception in an election year pursuant~~
8 ~~to Section 1-19-33 NMSA 1978]~~ no activity, all reporting
9 individuals shall [~~annually~~] file with the proper filing
10 officer a report of expenditures and contributions on a
11 prescribed form. [~~The report shall be filed on the second~~
12 ~~Monday in May pursuant to the provisions of Subsection A of~~
13 ~~Section 1-19-29 NMSA 1978.~~]

14 B. The proper filing officer for filing reports of
15 expenditures and contributions by a political committee is the
16 secretary of state.

17 C. The proper filing officer for filing reports of
18 expenditures and contributions or statements of [~~exception]~~ no
19 activity is the secretary of state for all candidates and
20 public officials.

21 D. The secretary of state shall develop or contract
22 for services to develop an electronic reporting system for
23 receiving and for public inspection of reports of expenditures
24 and contributions and statements of [~~exception]~~ no activity to
25 the Campaign Reporting Act. The electronic reporting system

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1 shall:

2 (1) enable a person to file reports online by
3 filling out forms on the secretary of state's web site; and

4 (2) provide for encrypted transmissions."

5 Section 3. Section 1-19-28 NMSA 1978 (being Laws 1979,
6 Chapter 360, Section 4, as amended) is amended to read:

7 "1-19-28. FURNISHING REPORT FORMS--POLITICAL
8 COMMITTEES--CANDIDATES.--

9 A. The secretary of state annually shall furnish to
10 all reporting individuals the prescribed forms for the
11 reporting of expenditures and contributions, supplemental
12 reports and a statement of [~~exception~~] no activity and the
13 specific dates the reports and statement are due.

14 B. In addition to the provisions of Subsection A of
15 this section, at the time of filing a declaration of candidacy
16 or a nominating petition, the proper filing officer shall give
17 the candidate the prescribed reporting forms and the schedule
18 of specific dates for filing the required reports or a
19 statement of [~~exception~~] no activity. The prescribed forms
20 shall also be made available to all reporting individuals at
21 the office of the secretary of state and in each county at the
22 office of the county clerk."

23 Section 4. Section 1-19-29 NMSA 1978 (being Laws 1993,
24 Chapter 46, Section 5, as amended) is amended to read:

25 "1-19-29. TIME AND PLACE OF FILING REPORTS.--

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1 A. ~~Annually~~ Except as otherwise provided in this
2 section, all reporting individuals shall file with the proper
3 filing officer by 5:00 p.m. on the second Monday in ~~May~~
4 March, June, September and December a quarterly report of all
5 expenditures made and contributions received on or before the
6 first Monday in ~~May~~ those months and not previously reported.
7 The report shall be filed ~~annually~~ quarterly until the
8 reporting individual's bank account has been closed and the
9 other provisions specified in Subsection F of this section have
10 been satisfied.

11 B. In an election year, ~~in addition to the May~~
12 ~~report~~ instead of the quarterly reports provided for in
13 Subsection A of this section, all reporting individuals, except
14 for ~~persons who file a statement of exception pursuant to~~
15 ~~Section 1-19-33 NMSA 1978, candidates who file a statement of~~
16 ~~no activity and~~ public officials who are not candidates in an
17 election that year, shall file reports of all expenditures made
18 and contributions received or, if applicable, statements of no
19 activity, according to the following schedule:

20 (1) by 5:00 p.m. on the second Monday in
21 January, February, March, April, May, August, September and
22 October, a report of all expenditures made and contributions
23 received on or before the first Monday in ~~October~~ those
24 months and not previously reported;

25 (2) by 5:00 p.m. on the Thursday before a

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1 primary, general or statewide special election, a report of all
2 expenditures made and contributions received by 5:00 p.m. on
3 the Tuesday before the election. Any contribution or pledge to
4 contribute that is received after 5:00 p.m. on the Tuesday
5 before the election and that is for five hundred dollars (\$500)
6 or more in a legislative or non-statewide judicial election, or
7 two thousand five hundred dollars (\$2,500) or more in a
8 statewide election, shall be reported to the proper filing
9 officer either in a supplemental report on a prescribed form
10 within twenty-four hours of receipt or in the report to be
11 filed by 5:00 p.m. on the Thursday before a primary, general or
12 statewide special election, except that any such contribution
13 or pledge to contribute that is received after 5:00 p.m. on the
14 Friday before the election may be reported by 12:00 noon on the
15 Monday before the election; and

16 (3) by 5:00 p.m. on the thirtieth day after a
17 primary, general or statewide special election, a report of all
18 expenditures made and contributions received on or before the
19 twenty-fifth day after the election and not previously
20 reported.

21 C. If a candidate or public official has not
22 received any contributions and has not made any expenditures
23 since the candidate's or official's last report was filed with
24 the proper filing officer, the candidate or official shall only
25 be required to file a statement of no activity, which shall not

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1 be required to be notarized, in lieu of a full report when that
2 report would otherwise be due and shall not be required to file
3 a full report until the next required filing date occurring
4 after an expenditure is made or a contribution is received.

5 D. ~~[Notwithstanding the other provisions of this~~
6 ~~section, the report due on the thirtieth day after an election~~
7 ~~need be the only report filed after the annual May report if~~
8 ~~the candidate is not opposed in the election and if the report~~
9 ~~includes all expenditures made and contributions received for~~
10 ~~that election and not previously reported.] In an election~~
11 year, a public official who is not a candidate shall file
12 quarterly reports of expenditures made and contributions
13 received or statements of no activity in accordance with the
14 schedule provided for in Subsection A of this section.

15 E. A report of expenditures and contributions filed
16 after a deadline set forth in this section shall not be deemed
17 to have been timely filed.

18 F. Except for candidates and public officials who
19 file a statement of no activity, each reporting individual
20 shall file a report of expenditures and contributions
21 [~~annually~~] pursuant to the filing [~~schedule~~] schedules set
22 forth in this section, regardless of whether any expenditures
23 were made or contributions were received during the reporting
24 period. Reports shall be required until the reporting
25 individual delivers a report to the proper filing officer

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1 stating that:

2 (1) there are no outstanding campaign debts;

3 (2) all money has been expended in accordance
4 with the provisions of Section 1-19-29.1 NMSA 1978; and

5 (3) the bank account has been closed.

6 G. Each treasurer of a political committee shall
7 file a report of expenditures and contributions [~~annually~~]
8 pursuant to the filing [~~schedule~~] schedules set forth in this
9 section until the treasurer files a report that affirms that
10 the committee has dissolved or no longer exists and that its
11 bank account has been closed.

12 H. A reporting individual who is a candidate within
13 the meaning of the Campaign Reporting Act because of the amount
14 of contributions the candidate receives or expenditures the
15 candidate makes and who does not ultimately file a declaration
16 of candidacy or a nominating petition with the proper filing
17 officer and does not file a statement of no activity shall
18 [~~nevertheless file a report, not later than the second Monday~~
19 ~~in May for a primary election or the second Monday in October~~
20 ~~for a general election, of all contributions received and~~
21 ~~expenditures made on or before the first Monday in May for a~~
22 ~~primary election or the first Monday in October for a general~~
23 ~~election and not previously reported] file monthly reports in
24 accordance with Subsection B of this section.~~

25 I. Reports required by this section shall be

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1 subscribed and sworn to by the candidate or the treasurer of
2 the political committee. A report filed electronically shall
3 be electronically authenticated by the candidate or the
4 treasurer of the political committee using an electronic
5 signature in conformance with the Electronic Authentication of
6 Documents Act and the Uniform Electronic Transactions Act. For
7 the purposes of the Campaign Reporting Act, a report that is
8 electronically authenticated in accordance with the provisions
9 of this subsection shall be deemed to have been subscribed and
10 sworn to by the candidate or the treasurer of the political
11 committee who was required to file the report.

12 J. Reports required by this section shall be filed
13 electronically by all reporting individuals.

14 K. Reporting individuals may apply to the secretary
15 of state for exemption from electronic filing in case of
16 hardship, which shall be defined by the secretary of state."

17 Section 5. Section 1-19-32.1 NMSA 1978 (being Laws 1981,
18 Chapter 331, Section 9, as amended) is amended to read:

19 "1-19-32.1. REPORTS EXAMINATION--FORWARDING OF
20 REPORTS.--

21 A. The secretary of state shall conduct a thorough
22 examination of at least ten percent of all reports filed during
23 a year by reporting individuals, selected at random at least
24 forty days after the general election and ten days after the
25 [~~May~~] March reports are filed in a nonelection year, to

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1 determine compliance with the provisions of the Campaign
2 Reporting Act. The examination may include an investigation of
3 any discrepancies, including a cross-reference to reports filed
4 by any other reporting individual. A reporting individual
5 shall be notified in writing if a discrepancy is found in the
6 report filed and shall be permitted to file a written
7 explanation for the discrepancy within ten working days of the
8 date of the notice. The notice, penalty and arbitration
9 provisions set forth in Section 1-19-34.4 NMSA 1978 shall apply
10 to examinations conducted under this section.

11 B. After the date stated in the notice of final
12 action for submission of a written explanation, the secretary
13 of state shall prepare an annual report of any unresolved
14 discrepancies found after examination of the random sample
15 provided for in Subsection A of this section. A copy of this
16 report shall be transmitted to the attorney general for
17 enforcement pursuant to the provisions of Section 1-19-36 NMSA
18 1978. This report is a public record open to public inspection
19 and subject to the retention and destruction provisions set
20 forth in Section 1-19-32 NMSA 1978.

21 ~~[C. A county clerk shall deliver to the secretary~~
22 ~~of state, within forty-eight hours of the county clerk's~~
23 ~~receipt, each report of expenditures and contributions or~~
24 ~~statement of exception filed with the county clerk's office.~~
25 ~~Within forty-eight hours of receipt of a report of expenditures~~

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1 ~~and contributions or statement of exception filed by a~~
2 ~~legislative candidate for a multicounty district, the secretary~~
3 ~~of state shall deliver to each county clerk in the multicounty~~
4 ~~legislative district a copy of the report or statement filed.]"~~

5 Section 6. Section 1-19-35 NMSA 1978 (being Laws 1979,
6 Chapter 360, Section 11, as amended by Laws 1997, Chapter 12,
7 Section 2 and also by Laws 1997, Chapter 112, Section 5) is
8 amended to read:

9 "1-19-35. REPORTS AND STATEMENTS--LATE FILING PENALTY--
10 FAILURE TO FILE.--

11 A. Except for the report required to be filed and
12 delivered the Thursday prior to the election and any
13 supplemental report, as required in Paragraph (2) of Subsection
14 B of Section 1-19-29 NMSA 1978, that is due prior to the
15 election, and subject to the provisions of Section 1-19-34.4
16 NMSA 1978, if a statement of [~~exception~~] no activity or a
17 report of expenditures and contributions contains false or
18 incomplete information or is filed after any deadline imposed
19 by the Campaign Reporting Act, the responsible reporting
20 individual or political committee, in addition to any other
21 penalties or remedies prescribed by the Election Code, shall be
22 liable for and shall pay to the secretary of state fifty
23 dollars (\$50.00) per day for each regular working day after the
24 time required by the Campaign Reporting Act for the filing of
25 statements of [~~exception~~] no activity or reports of

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1 expenditures and contributions until the complete or true
2 statement or report is filed, up to a maximum of five thousand
3 dollars (\$5,000).

4 B. If any reporting individual files a false,
5 intentionally incomplete or late report of expenditures and
6 contributions due on the Thursday prior to the election, the
7 reporting individual or political committee shall be liable and
8 pay to the secretary of state five hundred dollars (\$500) for
9 the first working day and fifty dollars (\$50.00) for each
10 subsequent working day after the time required for the filing
11 of the report until the true and complete report is filed, up
12 to a maximum of five thousand dollars (\$5,000).

13 C. If a reporting individual fails to file or files
14 a late supplemental report of expenditures and contributions as
15 required in Paragraph (2) of Subsection B of Section 1-19-29
16 NMSA 1978, the reporting individual or political committee
17 shall be liable for and pay to the secretary of state a penalty
18 equal to the amount of each contribution received or pledged
19 after the Tuesday before the election that was not timely
20 filed.

21 D. All sums collected for the penalty shall be
22 deposited in the state general fund. A report or statement of
23 exception shall be deemed timely filed only if it is received
24 by the proper filing officer by the date and time prescribed by
25 law.

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1 E. Any candidate who fails or refuses to file a
2 report of expenditures and contributions or statement of
3 [~~exception~~] no activity or to pay a penalty imposed by the
4 secretary of state as required by the Campaign Reporting Act
5 shall not, in addition to any other penalties provided by law:

6 (1) have [~~his~~] the candidate's name printed
7 upon the ballot if the violation occurs before and through the
8 final date for the withdrawal of candidates; or

9 (2) be issued a certificate of nomination or
10 election, if the violation occurs after the final date for
11 withdrawal of candidates or after the election, until the
12 candidate satisfies all reporting requirements of the Campaign
13 Reporting Act and pays all penalties owed.

14 F. Any candidate who loses an election and who
15 failed or refused to file a report of expenditures and
16 contributions or a statement of [~~exception~~] no activity or to
17 pay a penalty imposed by the secretary of state as required by
18 the Campaign Reporting Act shall not be, in addition to any
19 other penalties provided by law, permitted to file a
20 declaration of candidacy or nominating petition for any future
21 election until the candidate satisfies all reporting
22 requirements of that act and pays all penalties owed."

23 Section 7. REPEAL.--Section 1-19-33 NMSA 1978 (being Laws
24 1979, Chapter 360, Section 9, as amended) is repealed.